

**Local 247, International Brotherhood of Teamsters,  
AFL-CIO and Rymco, Inc. Case 7-CC-1715**

November 8, 2000

**DECISION AND ORDER**

**BY CHAIRMAN TRUESDALE AND MEMBERS  
LIEBMAN  
AND HURTGEN**

On December 13, 1999, Administrative Law Judge Jerry M. Hermele issued the attached decision. The Respondent Union filed exceptions and a supporting brief and the General Counsel filed an answering brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,<sup>1</sup> and conclusions<sup>2</sup> and to adopt the recommended Order, as modified and set forth in full below.<sup>3</sup>

**ORDER**

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified and set forth in full below and orders that the Respondent, Local 247, International Brotherhood of Teamsters, AFL-CIO, Detroit, Michigan, its officers, agents, and representatives, shall

1. Cease and desist from threatening to picket or engage in a strike against John Carlo, Inc. or Rymco, Inc., where an object thereof is to force or require John Carlo, Inc. to cease doing business with Rymco, Inc., or any other person engaged in commerce.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

<sup>1</sup> The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

<sup>2</sup> In view of the Board's finding that the Respondent made a direct threat against the neutral employer, Member Liebman finds it unnecessary to pass on the separate allegation regarding the threat which was communicated only to the primary employer and not reported to the neutral employer. Member Liebman questions the continuing validity of *Wackenhut Corp.*, 287 NLRB 374 (1987) (Member Dennis dissenting), and *Tri-State Building & Construction Trades Council*, 272 NLRB 8 (1984), aff'd. sub nom. *Boilermakers Local 105 v. NLRB*, 781 F.2d 569 (6th Cir. 1986), on which the judge relied, and which found unlawful threats which are communicated only to the primary and not to the secondary employer.

<sup>3</sup> We will modify the judge's recommended Order and notice to include the narrow injunctive language which is appropriate for the 8(b)(4)(ii)(B) violations found.

(a) Within 14 days after service by the Region, post at its business office and at all meeting halls in Detroit, Michigan, copies of the attached notice marked "Appendix."<sup>4</sup> Copies of the notice, on forms provided by the Regional Director for Region 7, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(b) Within 14 days after service by the Region, sign and return to the Regional Director sufficient copies of the notice for posting by John Carlo, Inc. and Rymco, Inc., if they are willing, at all places where notices to employees customarily are posted.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

**APPENDIX**

**NOTICE TO EMPLOYEES AND MEMBERS  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government**

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT threaten to picket or engage in a strike against John Carlo, Inc. or Rymco, Inc., where an object thereof is to force or require John Carlo, Inc. to cease doing business with Rymco, Inc., or any other person engaged in commerce.

**LOCAL 247, INTERNATIONAL  
BROTHERHOOD OF TEAMSTERS, AFL-  
CIO**

*Kristen M. Niemi, Esq.*, for the General Counsel.

*Samuel C. McKnight, Esq. (Klimist, McKnight, Sale, McCloy & Canzano, P.C.)*, of Southfield, Michigan, for the Respondent.

*George M. Mesry and Frank T. Mamat, Esqs. (Clark Hill, P.L.C.)*, of Detroit, Michigan, for the Charging Party, Rymco, Inc.

<sup>4</sup> If this Order is enforced by a judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

DECISION<sup>1</sup>

## I. STATEMENT OF THE CASE

JERRY M. HERMELE, Administrative Law Judge. In a June 24, 1999 complaint, the General Counsel alleges that the Respondent, Local 247, International Brotherhood of Teamsters, AFL-CIO (the Union), violated Section 8(b)(4)(ii)(B) of the National Labor Relations Act by threatening a nonunion subcontractor, Rymco, Inc. (Rymco), with the shutdown of the construction project it was working on. The Union denied this allegation in its July 7, 1999 answer, stating that it never threatened Rymco. So, a trial was held in Detroit, Michigan on September 28, 1999, during which the complaint was amended with the allegation that the Union also threatened the general contractor, John Carlo, Inc., with shutdown of the project (Tr. 7, 173). At trial, the General Counsel called three witnesses and the Union called one witness. Finally, on November 18 and 19, 1999, the General Counsel and the Union filed their respective briefs.

## II. FINDINGS OF FACT

John Carlo, Inc. (Carlo), is a road builder in the Detroit area. Carlo's vice president is Joseph Catenacci, who is also known as Joe Carlo. The Company's big project for 1999 was the reconstruction of a seven-mile stretch of Interstate 275 outside Detroit, a \$65,000,000<sup>2</sup> job it was awarded by the Michigan Department of Transportation. Carlo started the I-275 job in April 1999 and it was scheduled to be completed by October 28, 1999. For every day thereafter, Carlo would be assessed a penalty of \$50,000. But if the job was finished early, Carlo was due \$50,000 a day, up to 30 days. Carlo was a party to a 1998-2003 collective-bargaining agreement between the Michigan Road Builders Association and Michigan Teamsters Joint Council 43, which includes Local 247. Carlo and its subcontractors on the I-275 project purchased interstate material exceeding \$50,000 (GC Exh. 1(e); R. Ex. 2; Tr. 12, 121-25).

One of the subcontractors on the I-275 job was Rymco, a "disadvantaged business enterprise," so classified by the State of Michigan, in part, because of the Korean ancestry of its President, Sonyoung Moore. Her husband, Richard Moore, is Rymco's Secretary-Treasurer.<sup>3</sup> Rymco has 10 trucks and 13 employees, and its main business is hauling road construction material. On the I-275 job, its task was to haul away pieces of the old broken road. Rymco is nonunion and has worked on various Carlo projects since 1994 (Tr. 18-20, 22, 24, 74, 97).

On December 18, 1998, Carlo Vice President Michael Donohoe talked with Mrs. Moore about working as a subcontractor on the I-275 job and they signed a contract that day (G.C. Exs. 2-3; Tr. 21, 76-77, 89, 126). And on April 22, 1999, Rymco started working on the project (Tr. 98-99). Be-

cause of rainy weather and/or the sporadic pace of the destruction of the existing road, Rymco worked only occasionally on the job thereafter. But Michael Thomas, Carlo's truck superintendent, would call Mr. Moore daily to inform Rymco if and where Rymco's trucks would be needed the next day (Tr. 31-32, 44, 100, 105-06, 126). In April and May 1999, Rymco worked for 13 days on the I-275 job, and for other Carlo projects (Tr. 34, 108). On the I-275 job, Rymco billed Carlo for \$5500 to \$5800 a day (Tr. 110). Also, Rymco worked on a project at Detroit's Metro Airport in the spring of 1999 for another contractor (Tr. 74).

Tommy Aloisio is the recording secretary and construction business agent for Local 247. Local 247 represented Carlo's employees on the I-275 job (Tr. 173-75). The Union had unsuccessfully attempted to organize Rymco's employees at the jobsite (Tr. 178). On May 11, 1999, Aloisio wrote the following letter to Catenacci:

This letter is to inform you that you are in violation of Michigan Road Builders Agreement, Article XXII, Subcontracting.

At 11:30 a.m. this morning, an organizer from our Local Union handed your superintendent on the I-275 road project, a list of trucks who do not have a contract with or belong to a Local in Joint Council 43, and obviously do not observe wages and fringes established by this Agreement.

I am hoping we can resolve this problem by tomorrow morning. If not, this Local will take the proper steps to correct the problem.

(GC Exh. 6.)

On May 25, Aloisio called Catenacci from his car telephone. Union organizer Scott Domine was with Aloisio in the car. Aloisio told Catenacci that there were several companies, including Rymco, on the I-275 job that were not paying union-level wages and benefits, and that he wanted Rymco to pay area standards (Tr. 175-76, 205-06). Aloisio also said "get those fucking non-union trucks off this job," and named Rymco. Otherwise, Aloisio said the Union would strike the I-275 job. Catenacci responded that he had to use minority subcontractors but that he would see what changes could be made (Tr. 128-31). Aloisio, however, denied ever threatening Catenacci with a work stoppage unless nonunion subcontractors were removed (Tr. 180-81). He also denied, in a pretrial affidavit, telling Catenacci that he wanted Rymco removed from the job, or that he wanted Rymco to become union or pay area standards (R. Exs. 5-6).

Catenacci then called back and gave Aloisio the name and number of Mrs. Moore (Tr. 177). But Catenacci gave Mrs. Moore a heads-up by calling her for the first time and telling her that the Union was bothering him about Rymco (GC Exh. 5, p. 1; Tr. 23-24). Then, Aloisio called her at 3:45 p.m. that day and asked what Rymco was paying its drivers. Aloisio said Rymco could not work on the I-275 project or anywhere else in southeast Michigan because Rymco was nonunion and not paying its employees enough. Aloisio added that Mrs. Moore sounded like a foreigner. So, he reiterated that, in simple Eng-

<sup>1</sup> Upon any publication of this decision by the National Labor Relations Board, "stylistic" changes may have been made by the Board's Executive Secretary to the original decision of the Presiding Judge.

<sup>2</sup> The incorrect figure of \$65,000 is reflected in the transcript, at p. 122.

<sup>3</sup> Moore claimed that Sonyoung was not installed as President so that Rymco could receive the advantage of the disadvantaged classification (Tr. 114-15).

lish, Rymco's employees must join the Union if it wanted to work on the I-275 job. Aloisio further added that he would also "shut down John Carlo." Finally, Aloisio told Mrs. Moore to respond by 5:00 p.m. with a positive answer, whereupon he hung up (Tr. 25-27, 78-79). Mrs. Moore became very upset by this conversation and, accordingly, talked to the police and thought about taking legal action against Aloisio (Tr. 58, 71-72). Aloisio denied telling Mrs. Moore that the Union would shut down Carlo or that the Union would prevent Rymco from working on other jobs (Tr. 181). Rather, Aloisio claimed that he simply called Mrs. Moore and asked her what she was paying her employees and what kinds of fringe benefits Rymco offered. He also claimed that he offered to meet with her and negotiate a contract, but Mrs. Moore said she might want to contact Local 614 instead. Then, according to Aloisio, Mrs. Moore accused him of threatening her whereupon Mrs. Moore hung up the telephone (Tr. 177-80).

Aloisio conceded that he called Catenacci again and told him of his conversation with Mrs. Moore. Catenacci asked Aloisio to "work with me on this" because he needed a lot of trucks for the I-275 job (Tr. 180). Nevertheless, within minutes, Catenacci instructed Thomas, the trucking superintendent, not to use any Rymco trucks (Tr. 131). Because Thomas never called Mr. Moore that afternoon, Mr. Moore called Thomas, who said that Carlo could no longer use Rymco because it was nonunion. The next day, May 26, Mr. Moore learned from Thomas that union trucks were now doing Rymco's job (Tr. 33, 101-03).

On May 27, 1999, Aloisio called Mrs. Moore again. He said that he would shut down the Metro Airport job Rymco was working on too. Mrs. Moore then hung up (GC Exh. 5, p. 3; Tr. 28-29). Mrs. Moore then called someone at Carlo to get a copy of her contract with Carlo for the I-275 project (GC Exh. 4; Tr. 76-77). According to Aloisio, however, he merely called Mrs. Moore, after seeing Rymco trucks working at the airport, to ask her about meeting to discuss a contract. Mrs. Moore then asked why he continued to threaten her and she hung up (Tr. 182).

On June 1, 1999, Rymco filed a charge against the Union with the National Labor Relations Board's Regional Office in Detroit. On June 4, Catenacci gave an affidavit to a Board agent which generally contradicted his trial testimony because, according to Catenacci, he did not want any trouble from the Union on the I-275 job (Tr. 163-64). Indeed, before signing the affidavit, Aloisio conceded that Catenacci asked "what do you want me to say?" According to Aloisio, he told Catenacci to "tell them the truth" (Tr. 186-87). In the affidavit, Catenacci said that Aloisio called him in May 1999 and merely said that "all truckers on the job had to be union truckers." But Catenacci added in the affidavit that Aloisio said "if we used non-union drivers on the job he would picket" and that he then instructed Thomas "try not [to] use any non-union truckers until all of the union truckers were exhausted." Finally, Catenacci explained therein that "[t]he only reason Rymco is not working on the project now is that its part of phase 1 has concluded. . . . When we are ready to begin phase 2 we will call Rymco again" (R. Exs. 3-4). But at trial, Catenacci explained that the first part of the project did not end until approximately July 1 (Tr. 165).

On June 7, someone from Carlo called Mr. Moore to inquire whether Rymco could return to work the next day. And Rymco's trucks did. This June 7 call was the first from anyone at Carlo since May 26 (Tr. 103, 113). The Union never struck or picketed the I-275 job (Tr. 149, 183). But Aloisio considered his May 11 letter to Catenacci to constitute a grievance against Carlo (Tr. 183, 192-93).

### III. ANALYSIS

Since 1947, Section 8(b)(4) of the Act has outlawed certain types of secondary activity by unions against neutral employers. And since 1959, Section 8(b)(4)(ii)(B) has prohibited a union from threatening, coercing, or restraining "any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is . . . to cease doing business with any other person. . . ." Here, the General Counsel alleges that Local 247 illegally threatened both the nonunion subcontractor Rymco and the unionized, and neutral, general contractor Carlo with a shutdown of Carlo's entire operation shortly after Rymco commenced its work on the I-275 project in May 1999. The Union denies threatening anyone and, moreover, offers the defense that it also had a labor dispute with Carlo, thus neutralizing any violation of Section 8(b)(4)(ii)(B) of the Act.

On the facts, the Presiding Judge concludes that the General Counsel has indeed proven that union official Aloisio threatened both Mrs. Moore and Catenacci. First, the trial demeanor of all three witnesses supports the General Counsel's case. Mrs. Moore testified with the sincerity of righteous indignation about Aloisio's two threatening telephone calls. Catenacci likewise testified in a sincere and forthright manner about Aloisio's threats. In this regard, Catenacci logically explained that he denied at first, in a pretrial affidavit, that Aloisio made any such threat because, as a union contractor, Carlo needed to continue to work with Aloisio. As for Aloisio, his underwhelming denials were further undercut by his pretrial affidavit, which he contradicted at trial, denying that he ever told Catenacci that the Union wanted Rymco "to become union or pay area standards." In short, Mrs. Moore and Catenacci were compelling witnesses and Aloisio was not. Second, it is significant that the Union inexplicably failed to call organizer Scott Domine as a witness, who was present in Aloisio's car when Aloisio threatened both Catenacci and Mrs. Moore and was apparently present at the trial.<sup>4</sup> Thus, it must be presumed that Domine would have backed up the testimony of Catenacci and Mrs. Moore. See *International Automated Machines*, 285 NLRB 1122 (1987). Accordingly, Aloisio's unsupported version is far outweighed by the actual testimony of two other witnesses—Catenacci and Mrs. Moore—and the presumed testimony of a third witness, Domine. Third, Aloisio's blunt May 25, 1999 threats to Catenacci and Mrs. Moore are corroborated by Catenacci's immediate reaction thereto: an order that Carlo no longer use Rymco trucks on the I-275 job beginning May 26. In sum, the clear preponderance of the evidence supports the General Counsel's allegations.

<sup>4</sup> Someone identified as "Scotty" left the courtroom before implementation of the sequestration order in this case (Tr. 15).

Turning to the Union's asserted legal defenses, it first refused at trial to stipulate that Rymco is subject to the Act's jurisdiction. But the Union did stipulate that Carlo is subject to the Act's jurisdiction. And the Board has clearly held that in determining whether the primary employer, Rymco, is covered, jurisdiction can be obtained via the operation of the affected secondary employer, Carlo. *Teamsters (McAllister Transfer)*, 110 NLRB 1769 (1954). Moreover, in working on the I-275 job for 13 days in April and May 1999, billing Carlo for at least \$5500 a day, Rymco performed services exceeding \$50,000, before Carlo threw it off the job following the Union's threats. Thus, it is concluded that Rymco was engaged in commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4) of the Act.

Second, in defending itself against the charge that it threatened Rymco, with the intent of shutting down Carlo's I-275 operation, the Union argues that it never intended that Rymco inform Carlo of this threat. It is true that Mrs. Moore never called Catenacci after either of Aloisio's two threatening phone calls to her and it is likewise true that Catenacci was not a party to either of Aloisio's calls to Mrs. Moore. But the Board has held that threats such as Aloisio's to Mrs. Moore, out of the presence of the neutral employer, are still illegal because they are "directed toward the neutral employer," thus constituting "a threat of secondary pressure within the meaning of Section 8(b)(4)." *Wackenhut Corp.*, 287 NLRB 374, 382 (1987), quoting *Tri-State Building Trades Council (Backman Sheet Metal)*, 272 NLRB 8 fn. 1 (1984), *enfd.* 781 F.2d 569 (6th Cir. 1986). And notwithstanding the Union's effort to split hairs over what it subjectively intended Mrs. Moore to do after receiving Aloisio's threats, it must be recognized that Aloisio also called Catenacci before and after the May 25 phone calls to Mrs. Moore and threatened Catenacci with striking the I-275 job because of Rymco's presence. Moreover, Aloisio quickly achieved his ultimate goal on May 25 by forcing Catenacci to jettison Rymco from the job. Therefore, the Union's indirect threats to Carlo, via Rymco, violated the Act.

Lastly, in defense of the allegation that it threatened Carlo, the Union contends that it also had a "primary labor dispute" with Carlo, thus inoculating it against any violation of Section 8(b)(4). At the outset, though, it must be recognized that a

union bears a "heavy burden" in demonstrating the loss of an employer's neutrality. *Service Employees Local 525*, 329 NLRB 638 (1999). In support of its claim, the Union points out that it sent Carlo a letter on May 11, 1999 informing Carlo that nonunion trucks were working on the I-275 job and that the Union "will take the proper steps to correct the problem" if the matter were not resolved by "tomorrow morning." But Rymco continued to work at the jobsite for nearly 2 more weeks and the Union did nothing *before* Aloisio's threatening phone calls on May 25 evidencing a primary labor dispute with Carlo. Also, the Presiding Judge rejects the Union's claim that its "dispute" with Carlo caused it to file, and prosecute, a grievance against Carlo as of May 11. As the General Counsel correctly points out, the Union "had done nothing in furtherance of this so-called grievance" through the trial of this case as required by the collective-bargaining agreement. Thus, the Union's lack of any substantive action against Carlo before May 25 shows that Carlo was indeed a neutral secondary employer on May 25, when the Union's proscribed object was to entangle Carlo in its dispute with Rymco. See *NLRB v. Denver Building & Construction Trades Council*, 341 U.S. 675 (1951).

#### IV. CONCLUSIONS OF LAW

1. John Carlo, Inc. and Rymco, Inc. are employers engaged in commerce or in an industry affecting commerce within the meaning of Sections 2(2), (6), and (7), and 8(b)(4) of the Act.

2. The Respondent, Local 247, International Brotherhood of Teamsters, AFL-CIO, is a labor organization within the meaning of Section 2(5) of the Act.

3. The Respondent violated Section 8(b)(4)(ii)(B) of the Act on May 25 and 27, 1999, by threatening Rymco, Inc. with the shutdown of the operations of John Carlo, Inc. at the I-275 jobsite.

4. The Respondent violated Section 8(b)(4)(ii)(B) of the Act on May 25, 1999, by threatening John Carlo, Inc., a neutral general contractor, with the shutdown of the I-275 jobsite.

5. The unfair labor practices in paragraphs 3 and 4, above, affect commerce within the meaning of Section 8(b)(4)(ii)(B) and Section 2(6) and (7) of the Act.

[Recommended Order omitted from publication.]